(1998) 04 AHC CK 0038

In the Allahabad High Court

Case No : C.M.W.P. No. 27633 of 1995

Susheel Kumar APPELLANT

Vs

L.I.C. of India and another RESPONDENT

Date of Decision : 10-04-1998

Acts Referred:

Citation : (1999) ACJ 793 : (1998) 2 AWC 1370 : (1998) 3 CivCC 154

Hon'ble Judges : S.L. Saraf, J;M. Katju, J

Bench : Division Bench

Advocate : Yogesh Agrawal, for the Appellant; G.C. Bhattacharya, M.L. Shukla and S.C., for the Respondent

Judgement

S.L. Saraf, J.—This writ petition has been filed by one Sushil Kumar father of Late Alok Kumar Sah against the Life Insurance Corporation of India challenging the repudiation of the claim under the policy of life insurance. The case of the petitioner is that his son Alok Kumar who was of 25 years of age got himself insured with the Life Insurance Corporation of India. The policy being numbered 23002314 commenced from 8th August. 1987 for the assured sum of Rs. 51,000 with an annual premium of Rs. 687.90. The first premium was paid on 31st August, 1987. Unfortunately, the said Sri A. K. Sah, who was an engineer in the Indian Telephone Industries, Allahabad fell ill with some heart ailment. He was taken to Appollo Hospital. Madras, where he ultimately died on 25.2.1988. The death occurred due to the left ventricular failure after open heart surgery. A copy of the medical certificate has been attached with the writ petition. The said certificate further discloses that the deceased was suffering from infective endocarditic .The said certificate opines, that the petitioner''s son was suffering from the said disease only for four and a half months prior to his death and when he developed symptoms like fever, breathlessness and palpitation. Only on and from October, 1987, these symptoms were observed by the deceased. According to the said certificate, the petitioner was having aortic" stenosis.

2. After the death of the deceased, his father, who is an old man of sixty years

and a nominee under the said policy claimed the assured sum on the death of his son. The Insurance Company, however, by a letter dated 27th March, 1990, repudiated the claim of the petitioner without giving him any personal hearing on the ground that the said deceased withheld material information regarding his health and hence this petition.

3. The respondents in the counter-affidavit filed before this Court has raised several objections, firstly that the writ petition was not maintainable and a civil suit should have been a proper remedy. Secondly, the deceased has withheld the material facts before entering into the contract of Insurance. The petitioner was guilty of misrepresentation and did not disclose full material facts within his knowledge. In support of the aforesaid contention, several documents have been annexed to the counter-affidavit. The first document is the same document of Appollo Hospital. Madras which has been annexed to the writ petition. Besides the aforesaid documents, two other documents have been annexed to the counter-affidavit. One is a certificate given by Dr. G. K. Goel of Zero Road, Allahabad. According to Dr. Goel, during the period 1987 to 1989, except the problem of tonsflitls fever and typhoid fever, he had no other problem. Another certificate annexed to the counter-affidavit of Dr. Anil Agarwal of Shiv Charan Lal Road, Allahabad discloses that the petitioner during 1987 was suffering from fever and cough.

4. Heard Sri Yogesh Agarwal, learned counsel for the petitioner and Sri G. C. Bhattacharya for the respondents.

5. We have gone through the petition and the counter-affidavit filed by the respondents, perused the annexures and have carefully considered the submissions of the counsel appearing for the petitioner as also of Life Insurance Corporation of India.

6. From the disclosed documents, it no where appears that there was any suppression of any material facts by the deceased. The cause for the death of the deceased was infective endocarditic and he died due to acute left ventricular failure after open heart surgery. It has been opined by the doctors at Appollo Hospital. Madras that he was suffering from the aforesaid decease only last four and a half months prior to his death and the symptoms of his ailment like fever, breathlessness and palpitation only developed during that period. According to the doctors, the deceased was suffering from aortic stenosis. The Insurance Company had also filed the certificate of Dr. Anil Kumar Agarwal, M. D., Shiv Charan Lal Road, Allahabad on the basis of which the Insurance Policy was Issued to the deceased. From the certificate required for proposal for Insurance on life, there are large number of questionnaires, particularly the serial Numbers 15, 16, 17. 18 19, 20, 21, 22. 23 24. 25. The aforesaid questions have been answered by the doctors on examination of the deceased and the petitioner has not died for any reasons recorded in those questionnaires. There is no column in the said doctor''s examination certificate which requires a patient to disclose any heart disease, nor the doctor on his own has found any major medical defect on

the body of the deceased. It is a common knowledge that aortic stenosis which is a structural defect of valve of the heart could easily be detected clinically by stethoscope examination. In any view of the matter and in the absence of any symptoms, the deceased could not possibly have disclosed anything regarding his heart problem nor the same was detected by the panel doctor of the Insurance Company Dr. Anil Agarwal at the time of Issuance of the Insurance Policy. The factual finding is that infective endocarditic was only noticed four and a half months prior to the death of the deceased and the patient died of acute left ventricular failure after open heart surgery. The Insurance Company also did not disclose any documents to the contrary. The documents disclosed by the respondent relates to minor ailments. In that view of the matter, we find that there has been no suppression of material facts by the deceased at the time of taking the policy of Insurance.

7. Mr. Bhattacharya placed before us a judgment of the Supreme Court in the case of Life Insurance Corporation of India v. Smt. Kiran Sinha AIR 1985 SC 1265. In our opinion, this case is clearly distinguishable, inasmuch as no disputed questions of fact are Involved in the present case. From the pleadings and annexures thereto of both the petitioner''s and respondents, the facts are admitted. There has been no suppression of material facts. The columns in the medical certificate have been answered truthfully. In the absence of any column regarding heart disease, the deceased was not obliged to answer the same, assuming that he had the knowledge of the same. Further the panel doctor examining the deceased also did not detect the aortic stenosis at the time. As such the case of the respondent that there was suppression of material facts cannot be supported. Moreover, in the aforesaid Supreme Court case itself, the learned Attorney General had advised the Life Insurance Corporation of India to settle the claim of the deceased without resorting to the civil court. In the instant case, the father of deceased has filed the writ petition four years ago and is an old man suffering from several physical ailments and it would be unfair and travesty of justice if he is to knock at the door of the civil court for years particularly when the facts in the present case clearly entitled the petitioner to the relief sought for.

8. In the result the petition succeeds and is allowed. The Insurance company is directed to pay the full assured amount along with the interest at the rate of 12% per annum from the date of the claim of the petitioner till the date of payment. The respondent is further directed to make the payment of the insured amount along with interest to the petitioner within a period of three weeks from the date of service of the certified copy of the order. The respondents are further directed to pay a sum of Rs. 5,000 (five thousand) by way of costs of this petition payable within the said period of three weeks.